APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED APRIL 22, 2008

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-55751

D.C. No. CV-05-00389-AHM

AMY ROBERTSON, individually and Guardian Ad Litem for RYDER ROBERTSON; CURTIS ROBERTSON, individually and as Guardian Ad Litem for RYDER ROBERTSON,

Plaintiffs - Appellants,

v.

COUNTY OF VENTURA, a political entity; JODY KELLER, as an individual who is employed by the Ventura County Sheriff's Department; WAREHAM, Sgt., as an individual whos is employed by the Ventura County Sheriff's Department, e/s/a David Wareham; SCOTT PETERSON, as an individual who is employed by the Ventura County Sheriff's Department; DONNA KUENEN, as an individual who is employed by the Human Services Agency of the County of Ventura, e/s/a Donna Kounen; THERESA MAYERNIK, as an individual who is employed by the Human Services Agency of the County of Ventura; HAROLD AMER, MD, an individual; NEIL KAUFMAN, MD, an individual; KENNETH WRIGHT, MD, an individual,

Defendants - Appellees.

Appendix A

Appeal from the United States District Court for the Central District of California
A. Howard Matz, District Judge, Presiding

Argued and Submitted April 10, 2008
Pasadena, California

Before: HALL, T.G. NELSON, and SILVERMAN, Circuit Judges.

MEMORANDUM*

Amy and Curtis Robertson, individually and as guardians ad litem for their child, Ryder Robertson, brought this 42 U.S.C. § 1983 action against various defendants based on the temporary removal of Ryder from his parent's custody. The Robertsons appeal the district court's grant of summary judgement in favor of Theresa Mayernik, Ventura County, and the County's employees. They also appeal the dismissal of their claims against Drs. Amer, Kaufman, and Wright. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

We review the district court's grant of absolute or qualified immunity de novo. *Botello v. Gammick*, 413 F.3d 971, 975 (9th Cir.2005). We review the district court's grant of summary judgment and dismissal for failure to state a claim de novo. *Woodrum v. Woodward County, Okla.*, 866 F.2d 1121, 1124 (9th Cir.1989); *Coverdell v.*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Dep't of Soc. & Health Servs., State of Wash., 834 F.2d 758, 761 (9th Cir.1987).

The district court did not err when it granted summary judgment in favor of Ventura County on the Robertsons' *Monell* claim. The Robertsons did not put forth sufficient evidence that Ventura County ratified the employees' actions. *See Gillette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir.1992).

The district court also properly granted summary judgment in favor of Donna Kuenen, Jody Keller, Theresa Mayernik, David Wareham, and Scott Peterson. Kuenen was entitled to absolute immunity for her actions related to the decision to initiate the detention hearing by filing the Section 300 petition and detention report. *See Beltran v. Santa Clara County*, 514 F.3d 906, 908 (9th Cir.2008).

Further, Kuenen's other actions and the actions of Keller, Mayernik, Wareham, and Peterson are entitled to qualified immunity. When these defendants were making discretionary decisions that were not similar to prosecutorial decisions, they were entitled to qualified rather than absolute immunity. *See Miller v. Gammie*, 335 F.3d 889, 898 (9th Cir.2003).

Kuenen and Keller are entitled to qualified immunity because their actions did not violate constitutional rights of which a reasonable person would have known. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Mayernik, Wareham, and Peterson are also entitled to

qualified immunity because there is no showing that they violated any of the Robertsons' established rights.

Finally, the § 1983 claim was properly dismissed as to Drs. Harold Amer, Neil Kaufman, and Kenneth Wright because these doctors are not state actors. *See Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir.1999). Moreover, there is no showing that any of their actions were improper.

AFFIRMED.

APPENDIX B — CIVIL MINUTES – GENERAL OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA DATED AUGUST 26, 2005

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 05-389 AHM (FMOx)

Date August 26, 2005

Title AMY ROBERTSON, et al. v. COUNTY OF VENTURA, et al.

Present The Honorable A. Howard Matz

Stephen Montes
Deputy Clerk

N/A
Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs: No Appearance

Attorneys Present for Defendants: No Appearance

Proceedings: In Chambers

Appendix B

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP RULE 73(d)

Defendants Dr. Harold Amer and Dr. Neil Kaufman ("Moving Defendants") move to dismiss the claims alleged in the Second Amended Complaint ("SAC") against them. A hearing was held in this matter on August 22, 2005, and the Court took the motion under submission. The Court hereby GRANTS the motion to dismiss[1] with prejudice.

Plaintiffs assert two causes of action against the Moving Defendants: conspiracy to violate constitutional rights, and violation of 14th amendment rights actionable under 42 U.S.C. § 1983. Plaintiffs allege that each of the Moving Defendants "conspired to have Ryder Robertson taken from his parents and be placed in foster care . . . in violation of his Fourth and Fourteenth Amendment due process rights . . . ." *Id.*, ¶ 54. Specifically, Plaintiffs allege that the Moving Defendants "agreed to prepare letters of detriment for the purpose of obtaining a 'hold' on Ryder and filing a § 300 petition" and that they each wrote a "letter of detriment" to the Ventura County Human Services Agency that stated that the medical condition of Ryder Robertson was consistent with infantile shaking or Shaken Baby Syndrome ("SBS"). SAC, ¶¶ 40, 41, 43.

Pursuant to Cal. Penal Code § 11172, "[n]o mandated reporter shall be civilly or criminally liable

1. Docket No. 45.

for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment." Penal Code § 11165.7(a) defines "mandated reporter" as, among other things, a "(21) physician, surgeon, psychiatrist, psychologist, dentist, resident, ..." Therefore, The Moving Defendants are mandated reporters under the statute.

Mandated reporters are required to make a report whenever they have knowledge of or observe a child whom they know or reasonably suspect that a child has been the victim of child abuse or neglect. Cal. Penal § 11166. The Moving Defendants' "letters of detriment," which reported to a county agency that Ryder's condition was consistent with SBS, are properly classified as mandated reports pursuant to the statute. *See also Stecks v. Young*, 38 Cal. App. 4th 365, 375 (1995) (§ 11172 protection extends to untimely reports).

Even if the Moving Defendants' "letters of detriment" were not considered mandated reports under § 11166, they were authorized reports to the Ventura County Human Services Agency. *See* Cal. Penal § 11167(b) and (c). Reports authorized under the statute are equally protected under the immunity provision of § 11172. *Ferraro v. Chadwick*, 221 Cal. App. 3d 86, 95 (1990) (holding that § 11172 cloaks a mandated reporter with immunity for activity after the report of suspected child abuse mandated by § 11166(a) is made).

Appendix B

Plaintiffs' reliance on *James W. v. Superior Court*, 17 Cal. App. 4th 246 (1993), for the proposition that only the original report of suspicion of child abuse is entitled to the protection of § 11172, is misplaced. The facts of *James W.* are very different from those alleged in the SAC. As just two examples, the Moving Defendants are doctors, not private family counselors, and the Moving Defendants did not conduct a two year campaign to have anyone convicted of child abuse, but rather filed mandated or authorized reports to the county agency that did not accuse anyone of child abuse.

Moreover, the California Child Abuse and Neglect Reporting Act ("CANRA") has been amended in ways that expand the protections of the immunity provision on at least three occasions. California and federal district courts have consistently found doctors who report suspected child abuse immune from civil liability under § 11172 and similar provisions. *See Thomas v. Chadwick*, 224 Cal. App. 3d 813 (1990); *Ferraro v. Chadwick, supra*; *Storck v. Suffolk County Dep't of Soc. Services*, 62 F. Supp. 2d 927 (E.D.N.Y. 1999); *Bryant-Bruce v. Vanderbilt Univ., Inc.*, 974 F. Supp. 1127, 1141 (M.D. Tenn. 1997); *Haag v. Cuyahoga County*, 619 F. Supp. 262 (N.D. Oh. 1985).

The Court rejects Plaintiffs' contention that recognizing and enforcing the Moving Defendants' immunity is inconsistent with the intent of Congress as expressed in the Child Abuse Prevention and Treatment Act ("CAPTA"). *See* 42 U.S.C. § 5106a. Nor, as some of the above-cited decisions reflect, does this ruling detract

from or otherwise reduce the power of § 1983 to protect individuals' rights. Congress enacted CAPTA after it enacted Section 1983, and the public policies that both CAPTA and the CANRA promote are best served by this result.

For the reasons discussed above, the Court GRANTS the Moving Defendants Motion to Dismiss with prejudice.

As discussed at the hearing in this matter, Plaintiff asserts no claims against Dr. Moishe Danielpour and Dr. Lizbeth Vencencio-Regner, even though they are named in the caption, and they are hereby DISMISSED with prejudice.

Initials of Preparer [illegible]

APPENDIX C — EXCERPT OF REPORTER'S TRANSCRIPT DATED APRIL 24, 2006

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE A HOWARD MATZ,
JUDGE PRESIDING

NO. CV05-389-AHM

AMY ROBERTSON, ET AL.,

PLAINTIFFS,

VS

COUNTY OF VENTURA, ET AL.,

DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA MONDAY,
APRIL 24, 2006

[Commencing at Page 4]

* * *

THE COURT: YOUR FIRST COUNT IS CONSPIRACY TO VIOLATE YOUR CLIENT'S FOURTEENTH AMENDMENT RIGHTS TO BE FREE FROM INTERFERENCE IN THEIR FAMILIAL RELATIONSHIPS. THAT'S A FEDERAL CONSTITUTIONAL CLAIM.

Appendix C

YOUR SECOND CLAIM — ALL ARISING OUT OF THE SAME. ASSERTED FACTS — IS FOR A VIOLATION OF THE FOURTH AMENDMENT.

YOUR THIRD CLAIM IS FOR VIOLATION OF THE FOURTEENTH AMENDMENT, ONCE AGAIN, DEPRAVATION OF FAMILIAL INTERESTS.

IN TERMS OF DETERMINING WHETHER THE DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT BASED ON GROUNDS OF IMMUNITY, DON'T YOU AGREE THAT AS TO ALL THREE COUNTS, THE ANALYSIS IS THE SAME?

MR. HAMLISH: AS FAR AS IMMUNITY IS CONCERNED, YES, OKAY.

THE COURT: AND IT'S ON THE BASIS OF IMMUNITY THAT GRANT THE SUMMARY JUDGMENT AS TO THE DEFENDANTS, AND YOU WILL HEAR WHY. AND ALL OF THOSE DEFENDANTS —

MR. HAMLISH: MAY I MAKE ONE DIFFERENTIATION?

THE COURT: YES.

MR. HAMLISH: THE ANALYSIS ON ABSOLUTE IMMUNITY AND QUALIFIED IMMUNITY ARE DIFFERENT ANALYSES.

THE COURT: OH, I KNOW THAT.

MR. HAMLISH: OKAY. JUST —

THE COURT: I AM AWARE OF THAT.

UNITED STATES DISTRICT COURT

[Page 5] MR. HAMLISH: THAT'S WHY I DON'T — I DON'T THINK

2 THE ANALYSIS TOWARD KELLER SHOULD BE ON ABSOLUTE IMMUNITY. IT SHOULD BE ON QUALIFIED IMMUNITY. THAT'S WHY I WAS HESITATING.

THE COURT: OKAY. WELL, ON — I THINK ALL THREE WOULD BE ENTITLED TO ABSOLUTE IMMUNITY. I THINK THAT THE SAME IS TRUE EVEN IF THE APPLICABLE STANDARD FOR EITHER KELLER OR FOR MAYERNIK WERE QUALIFIED IMMUNITY. I WILL TELL YOU WHY IN JUST A MINUTE.

THE NEXT QUESTION I HAD WAS THAT MY UNDERSTANDING FROM THESE VOLUMINOUS PAPERS IS THAT YOU HAVEN'T OPPOSED THE COUNTY'S MOTION TO DISMISS THE MONELL CLAIM; CORRECT?

MR. HAMLISH: I HAVEN'T OPPOSED IT?

THE COURT: YES.

MR. HAMLISH: THE ISSUE THERE IS —

THE COURT: YOU HAVE ADMITTED THAT YOU HAVE NO FACTS TO SUPPORT THE CLAIM IN THE SGI AT PARAGRAPH 31.

MR. HAMLISH: YEAH, WELL —

THE COURT: OKAY.

MR. HAMLISH: BUT I — THAT DOES NOT MEAN WE DON'T — WE HAVE NOT — WE WERE OMITTING THE — BECAUSE WE ARE LOOKING AT RATIFICATION RATHER THAN POLICIES AND PROCEDURES. THAT'S — THAT'S MY CLAIM AGAINST THE COUNTY IS THE MONELL CLAIM. IT'S THE RATIFICATION OF RATHER THAN THE POLICIES AND PROCEDURES —

* * * *